

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Part 74 of the Commission's)	MB Docket No. 18-119
Rules Regarding FM Translator Interference)	
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)	

To: Office of the Secretary
Attn: The Commission

COMMENTS OF AZTEC CAPITAL PARTNERS, INC.

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August 6, 2018

SUMMARY

Aztec Capital Radio Partners, Inc. submitted one of the two petitions for rulemaking that resulted in this docketed proceeding. In these comments, Aztec supports: (1) FM translator channel changes to any channel as a minor modification; (2) a minimum number of listener complaints along with specific procedural changes to protect the integrity of the FCC's complaint processes; and (3) the proposed 54 dB μ contour limitation on complaints.

Aztec advocates in these comments for a preservation of local radio service no matter whether that local service is delivered by a full-service FM station or by an FM translator. Aztec fully supports the FCC's efforts in this NPRM to enhance the integrity of the FCC's FM translator procedures, and to ensure the protection of local radio audiences.

Aztec supports the change in the rules to allow for minor modifications to any same-band channel (i.e. within in the reserved band, or within the non-reserved band), noting that such a change will serve radio listeners well.

Aztec supports a minimum number of listener complaints. It notes, however, that the rules proposed carry forward the current "fools-errand" subjective aspect of current FCC processes in which the staff (and ultimately the Commission itself) is called upon to make factual judgments in the absence of a full record and administrative due process as to what constitutes interference to a *bona fide* disinterested radio listener. Aztec calls upon the Commission to further

establish in its revised rules a strict policy and process for the vetting and questioning of purported listener complainants for any untoward connections such complaining listeners may have with the existing station that is the subject of the complaints, as well as a more complete elucidation of the purported area of interference.

Finally, Aztec supports the proposed 54 dB μ limit for listener complaints as an equitable and a legally-supportable compromise. The only FM contour for which there is any like semblance of legal and technical support is the protected contour. While there is an argument that some existing FM stations have some number of listeners beyond the predicted 54 dB μ contour, at beyond the 54 dB μ contour such listeners are distant from both the station's city of license, the station's service area, and the local core of the station's coverage.

The equities now favor protecting local service provided to local listeners from FM translators carrying AM and HD sub-channel primary stations, in lieu of continuing to extend an existing station's signal far distant from its predicted contour, its community of license, its market, and its service area. The FCC adopting its proposals set forth in its NPRM consistent with, and as modified by, Aztec's comments below and the attached Appendix would serve localism, local radio listeners and the public interest.

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Aztec Capital Partners, Inc.¹ ("Aztec"), in response to the May 10, 2018 Notice of Proposed Rulemaking in MB Docket No. 18-119 (the "NPRM"), hereby submits its comments ("Comments") in favor of the Commission's proposed equitable rebalancing of its FM translator rules so that local radio service is not imprudently removed by distant radio stations far outside the local radio market. Aztec supports: (1) FM translator channel changes to any channel as a minor modification; (2) a minimum number of listener complaints along with procedural changes; and (3) the proposed 54 dBμ contour limitation on complaints. In support thereof, the following is submitted:

I. INTRODUCTION

1. In making its proposed changes, the FCC, above all, must protect local listeners of both existing FM stations and FM translator stations. Because of

¹ Aztec Capital Partners, Inc. is the licensee of WHAT(AM), WNWR(AM) and W260CZ, Philadelphia.

the nature of FM interference, this calls for a thoughtful balancing approach between the harms and benefits to local radio listeners in considering FM translator interference issues. Silencing an FM translator is contrary to the FCC's public interest goal of providing consistent and reliable radio signals to local listeners, as much as an FM translator interfering with the local audience of an existing station is against the public interest.

2. Aztec advocates in these comments for changes in the FCC's rules to preserve local radio service no matter whether that local service is delivered by a full-service FM station or by an FM translator. Under current FM translator interference rules and policies, the radio reception of thousands of local listeners can be shut down because the FCC fails to consider the extent to which local listeners will be affected if the programming provided by an FM translator is removed from the air. Aztec fully supports the FCC's efforts in this NPRM to enhance the integrity of the FCC's FM translator procedures, and to ensure the protection of local radio audiences.

3. Aztec in RM-11786 submitted one of the two petitions for rulemaking (its "Petition") that resulted in this docketed proceeding.² Aztec fully incorporates by reference its petition for rulemaking in support of the FCC's proposed rule changes. As described in its Petition, the history of FCC FM translator interference processes began in in 1990 when the FCC responded to rule

² Aztec filed its Petition for Rulemaking on April 7, 2017. On April 18, 2017, the Aztec Petition was placed on public notice (RM-11786). Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed, Public Notice, Report No. 3074 (CGB Apr. 18, 2017).

making petitions filed by the National Association of Broadcasters (“NAB”) and others, to adopt FM translator rules designed to prohibit FM translators from expanding primary stations’ service areas³. The FCC cited in that rule adoption what the NAB called the “Flagstaff situation” -- FM translators carrying distant out-of-market signals being imported into Flagstaff, dominating the ratings, and driving a local Flagstaff station off the air.⁴

4. Today, however, in a full-circle perversion of the FCC’s 1990 intentions in addressing the “Flagstaff situation”, distant full-service stations are fostering the filing of complaints far outside their communities of license and service areas against FM translators that are enabling the reception of local AM radio stations and local diverse HD sub-channels. The result today is that distant out-of-market stations are driving FM translators carrying local radio stations off the air using the 1990 rules.

5. The *1990 FM Translator Report and Order* was adopted at a time when FM translator service only rebroadcast other analog FM signals as primary stations. FM translators were then used “as a means of providing FM service to areas and populations that were unable to receive satisfactory FM signals due to distance and intervening terrain obstructions”.⁵

³ *Amendment of Part 74 of the Commission’s Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212 (1990) (hereafter the “*1990 FM Translator Report and Order*”), *aff’d* Memorandum Opinion and Order, 8 FCC Rcd 5093 (1993).

⁴ *1990 FM Translator Report and Order*, 5 FCC Rcd at 7216.

⁵ *Memorandum Opinion and Order*, 8 FCC Rcd at 5093 (emphasis added).

6. Now, however, consistent with the FCC's goals, FM translators serve AM primary stations as revitalization lifelines providing consistent and reliable signals to local AM radio listeners, and as HD sub-channel enhancements providing diverse analog programming to local FM listeners. Thus, an amendment of the FCC's rules to protect local listeners to FM translators as proposed in the NPRM is appropriate and overdue.

II. THE SECONDARY STATUS OF FM TRANSLATORS

7. As a prelude to commenting upon the FCC's proposed rules, Aztec submits that the FCC should clarify what is meant by FM translators being regarded as a "secondary" service under the rules. Neither in its Petition nor in these Comments is Aztec requesting a change in the secondary status of FM translators.⁶ Aztec suggest that there is a misconception that "secondary" service with respect to the status of FM translators refers to some sort of absolute priority of any full-service station over an FM translator. This erroneous concept permeates many of the comments associated with this proceeding and does not serve the public interest or further the FCC's goals.

8. Aztec requests that the Commission clarify that an FM translator's "secondary" status, at least for the purposes of interference, does not refer to an absolute unfettered right for any existing full-service station to claim a protection for its signal to extend as far as it possibly can go in lieu of an FM translator

⁶ See e.g. Section 73.207 of the Commission's rules which will continue to ignore FM translators and provide no protection whatsoever to FM translators in the allotment, assignment and modification of FM broadcast stations.

serving the public. Rather, “secondary” refers to the FCC’s allotment and assignment scheme as set forth in Part 73 of its rules in which an allotment of a new station, or a facility change of an existing station, will not be blocked by the presence of an FM translator. Nothing the FCC is proposing in its NPRM will change that secondary status of FM translators as set forth in the rules. Section 73.207 of the Commission’s rules will, with the changes proposed in the NPRM, continue to ignore FM translators and provide no protection whatsoever to FM translators in the allotment, assignment and modification of FM broadcast stations.

9. There is an argument to be made that even this “secondary” status of FM translators, at least for those carrying AM or diverse HD sub-channels as primary stations, should be modified. But that argument is beyond the scope of the NPRM. Aztec simply requests that the Commission not confuse its FM station allotment and assignment strictures in which some facilities are considered primary (i.e. full-service FM stations), while others are considered secondary (FM translators and LPFMs), with its FM translator interference rules and policies.

III. CHANNEL CHANGES TO ANY CHANNEL

10. The Commission proposes that Section 74.1233(a)(1) of the Commission’s rules be modified to define an FM translator’s change to any available FM channel as a minor change, upon a showing of interference to or from any other broadcast station. Aztec fully supports this proposed rule

amendment. As noted in the NPRM, a similar rule is in place for both LPTV facilities and LPFM facilities.⁷

11. As will be discussed in more detail below, FM interference is a mercurial beast, ebbing and flowing based upon not only co-channel and adjacent channel stations, but also upon antenna height, natural and man-made terrain, seasons, foliage, and atmospheric ducting. A change in the rules now to allow for minor modifications to any same-band channel (i.e. within in the reserved band, or within the non-reserved band) will serve radio listeners well.

12. It does not matter to a local radio listener whether interference is coming from a new FM translator station or from an existing station – in either case the public interest is not being served due to interference. If that interference regardless how it arises can be eliminated by a facility change to the FM translator, including a move to any other same-band channel, that facility change should be encouraged by the FCC’s rules and policies as it will well-serve local radio listeners and the public interest.

IV. MINIMUM NUMBER OF LISTENER COMPLAINTS – COMPLAINT REQUIREMENTS AND REMEDIATION PROCEDURES

13. The NPRM proposes that a minimum number of listener complaints to be submitted in support of any claim of translator interference, and a

⁷ 2 See, e.g., 47 CFR § 74.787(a)(4) (authorizing channel changes using a modification application for low power television stations that are “causing or receiving interference”); 47 CFR § 73.870(a)(1), (e) (authorizing channel changes to any frequency using a modification application for LPFM stations “upon a technical showing of reduced interference”).

codification of Section 74.1203(a)(3) and 74.1204(f) listener complaint requirements, as initially established in *Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12687 (2004). Aztec notes that while *Association for Community Education, Inc.* may be instructive, it is not determinative, nor may not even be the best policy today. The FCC in this notice and comment rulemaking proceeding is free as an administrative procedural matter to alter its *Association for Community Education, Inc.* requirements.

14. While Aztec generally supports the FCC's NPRM proposal, it notes that the listener interference complaint procedures simply carry forward the current "fools-errand" subjective aspect of current FCC processes in which the staff (and ultimately the Commission itself) is called upon to make factual judgments in the absence of a full record and administrative due process as to what constitutes interference to a *bona fide* disinterested radio listener. As Aztec noted in its Petition, there are, in current FM translator interference complaint proceedings, repeated instances of distant stations presenting complainants to the FCC only to have the complainants turn out to be connected to the distant station through friends, family or employees, or not receiving interference at all.

15. Aztec submits it is naïve to believe that simply having a purported complaining radio listener sign a more extensive piece of paper will stop the abuses of the FCC's processes through bogus listeners. The FCC's proposal to accept any signed piece of paper at face value without entertaining questioning of

the *bona fides* or legitimacy of the statements made invites fraud and abuse of the FCC's processes.

16. Aztec supports, in general, the FCC's NPRM proposal for additional complainant information submitted up front. Aztec calls upon the Commission to further establish in its revised rules a strict policy and process for the vetting and questioning of purported listener complainants for any untoward connections such as complaining listeners may have with the existing station that is the subject of the complaints as well as a more complete elucidation of the purported area of interference.

17. The FCC is correct in noting that in current FM translator interference proceedings, there are tremendous costs, efforts and resources expended by the FM translator's primary station in attempting to provide service to its local listeners and to rebuff the charges of interference from a handful of purported distant station listeners. The alternative to rebuffing such complaints, however, can be the death of the FM translator station based upon only one or two purported distant listeners with questionable *bona fides*. In short, there must be a real materiality threshold.

18. For example, in *Letter to Arohi Media, LLC, W252DK (formerly W234AR), Durham, NC*, reply reference 1800B3-PPD, dated September 25, 2018, an operating FM translator serving a large local audience was ordered off the air by the Audio Division due to a distant listener complaint from a neighbor of

Thomas Birch who is President of the existing complaining station.⁸ If there was ever a case of the “owner’s contour” (i.e. the owner of an existing radio station fostering self-serving interference complaints just so his station could be heard where he lives in a neighboring radio market), this is it.

19. The FCC’s Audio Division should be chagrined by the *Letter to Arohi Media, LLC* proceeding. This case should serve as a guide to the Commission in working toward the elimination of bogus and shill complaints from the FCC’s FM translator interference complaints procedures. After all, if one or even a few neighbors of the existing station’s owner can be cognizable complainants under the FCC’s new rules, just how much legitimacy will such rules have?

20. The Commission in the NPRM properly expresses great concern for the well-being of the radio listener complainants who are subject to the FCC’s FM translator complaint interference procedures. The FCC should also recognize, however, that when distant radio listeners are set up as agents for distant station owners attempting to extend the reach of his or her signals, it is not the bogus radio station listeners who should be protected, but rather the FM translator licensee who is often the owner of a stand-alone or daytime-only AM station struggling to serve its community and being threatened with a loss of its FM translator lifeline that needs the FCC’s procedural and regulatory protections. The FCC should insure that any new FM translator interference procedures adopted as

⁸ See *Letter to Arohi Media, LLC* at page 3 and footnote 38.

a result of this NPRM protects against malfeasant conduct such as neighbors, family, friends and business associates shilling as interference complainants.

21. There is an argument to be made that no broadcast radio facility, FM translators included, should be summarily ordered off the air, with the possible consequent loss of its license,⁹ without a hearing in which the truthfulness and veracity of factual witnesses against it are tested under oath and cross-examination. It appears from FCC records that many of the current Audio Division *ad hoc* proceedings seeking to remove a fill-in area FM translator from the air contain repeated instances of a distant station propping up to the FCC only to have such complainants turn out to be connected to the distant station through friends, family or employees.

22. Such complainants connected in one way or another to the complaining radio station raise significant questions as to the current processes now employed by the FCC in seeking compliance with Sections 74.1203(a)(3) & (b), and Section 74.1204(f) of the Commission's rules. The *ad hoc* procedures employed by the Audio Division where unverified complaints are taken as truth, complainants can refuse to truthfully answer as to their relationships with the complaining station, informal email exchanges take place between the FCC's staff and complaining station, and it is suspected that many complainants are shills for the complaining station, suggests that stricter administrative processes would serve

⁹ If a broadcast station is off the air for in excess of one continuous twelve month time period, its license expires pursuant to Section 312(g) of the Communications Act of 1934, as amended.

both the FCC's goal of maintaining the integrity of its processes as well as serve the public interest.

23. FM translators serving or proposing to serve large local audiences with reliable and consistent AM service, or with diverse HD sub-channel programming, are being threatened with removal from the air or with not going on the air at all through questionable complainants. Aztec encourages the Commission to adopt procedures through this NPRM that would greatly circumscribe, if not eliminate, the current games now played by distant stations in unfairly seeking to extend their protected contours at the expense of local radio listeners. The FCC should adopt procedures as a result of this NPRM that eliminate the incentive for a distant radio station owner or manager to troll for complaining individuals to enable that owner or manager to extend his or her station's signal out to the "owner's contour" – that last gasp of his or her radio signal coming through the FM hash. Aztec submits its proposed changes to the proposed Section 74.1201(k) (Definitions) in the attached Appendix.

24. Specific Questions Asked in the NPRM: Aztec specifically comments upon the questions raised the NPRM on the subject of the number of listener complaints as follows:

- *We seek comment on whether six complaints is a reasonable threshold of listener complaints. ... Should we vary this figure based on the population of the area affected, the total population served by the complaining station, or any other potential denominator, or would a single number work in most*

*situations?*¹⁰ The key for the proposed process is not the number of complaints, but the legitimacy of the complaints. Therefore, six complaints is as good as any other number if illegitimate complaints will be specifically discouraged because the complaining station knows that the FCC will go behind or question the *bona fides* of the complainants or the veracity of the radio listening claims. Any radio station worth its salt can generate six, sixteen or sixty complainants, either through on-air promotions or friends and family. If the FCC refuses to go behind the legitimacy of complaints and hold the complaining station responsible for misrepresentation and malfeasance for bogus complaints, the number of complainants is irrelevant.¹¹ Aztec submits that the complaints should be made subject to the penalties of perjury or 18 U.S.C. Section 1001 or the like.

- *Are there reasons to distinguish between translator and booster stations in this context?*¹² Booster station interference issues are few and far between. There is no reason to distinguish between translator and booster stations.
- *Is there a need to establish a maximum time period within which the required number of complaints must be obtained by the affected station and/or received by the Commission?*¹³ Absolutely yes. Other Commission rules addressing interference have reasonable time limits on interference complaints in other similar contexts such as the one-year time period for blanketing interference set forth in Section 73.318. A similar one-year time period from when an FM translator commences program test authority should be the outside date for interference complaints, with that one year time period only re-setting if the FM translator itself makes a substantial facility change, a new full-service station commences operations, or the existing station makes a change in class or transmitter site.¹⁴
- *Although most interference claims are submitted by the affected station, we also seek comment on appropriate procedures for handling complaints received directly from listeners. Should the Commission forward such complaints to the affected station*

¹⁰ NPRM at paragraph 16.

¹¹ See the rule changes Aztec proposes to Section 74.1201(k) (Definitions) in the attached Appendix.

¹² *Id.*

¹³ *Id.*

¹⁴ See the rule changes Aztec proposes to Section 74.1203(a)(3) (Interference) in the attached Appendix

*licensee?*¹⁵ Because of the history of shill and non-*bona-fide* interference complainants, and because nothing the Commission is proposing will forestall such abuses of its processes in the future, the Commission should require a complainant to submit the required interference information directly to the Commission, to state any connections whatsoever the complainant has to the station, its owners, its personnel, its advertisers or vendors, and any family members,¹⁶ to state under penalty of perjury that the information in the complaint is true and correct pursuant to the FCC's Section 1.16 verification procedures, to notify the listener that criminal prosecution may result from the submission of false information, and that the FCC may request further information from the complainant and a failure to submit such information will result in a dismissal of the complaint.¹⁷

- *We propose to clarify that social media connections, such as friending or following a station or its personnel on Facebook, Twitter, or other social media platforms, between listeners and the complaining station or its personnel will not be taken as evidence that a listener is impermissibly affiliated with the complaining station, because such a connection does not amount to a legal, economic, or familial interest in the station.*¹⁸ The FCC is improperly failing to distinguish between social media connections between “individuals” owning and managing the station, and between the “station” and listeners. A complainant should be required to reveal in the complaint form if he or she has a social media connection to the station or to *individuals* employed by the station or to any advertiser or other entity with a business relationship with the station. A normal radio listener does not become “friends” with the owner or with those in management of a radio station but such individuals connected by social media to such owners or management very much indicate

¹⁵ *Id.*

¹⁶ For the integrity of the FCC's processes, a complainant should state any connections whatsoever he or she has to the station, its owners, its personnel, its advertisers or vendors, and any family members, to allow the FCC and the public to make an independent assessment as to whether the complainant is acting on behalf of himself or herself in submitting the interference complaint, or rather is acting at the behest and on behalf of the existing station. It may not now be possible to either define the extent, kind or caliber of connection to the existing station that causes a complainant to be deemed by the FCC to be non-*bona-fide*, but without factual information submitted with the complaint, neither the FCC nor the courts can make a reasoned decision.

¹⁷ See the changes Aztec proposes to Section 74.1201(k) (Definitions) in the attached Appendix.

¹⁸ *Id.*

those who are more apt than not to accommodate a friend or business associate by the filing of an interference complaint, particularly in situations where the station is attempting to extend its signal. If a radio station does not have a minimum number of listeners suffering interference unencumbered by social media connections, then it likely does not have a *bona fide* interference claim. Each complainant as part of the standard information required to be submitted to the FCC should reveal any and all familial, social (such as country clubs, organizations, and schools), and social media connections with the station, its owners, its management, employees, advertisers and vendors, and all relatives of those with such relationships.¹⁹

- *Should we rely exclusively on technical U/D showings as proposed, or continue to involve the listener if the listener alleges that he or she subjectively continues to experience interference despite U/D showings to the contrary? If on/off tests are included as part of the remediation process, what technical standards or procedures, if any, should we require regarding location, timing, receivers, etc.? Should we require the use of specific receivers, or types of receivers, to promote consistent on/off test results? Would this proposal reduce or eliminate unproductive or unpleasant interactions between translator operators and complaining listeners?*²⁰ This series of asked questions through their cascading complexity suggests the answer. The answer is that only U/D showings should be used, and should be used exclusively. Any other attempted analysis only continues the FCC down the “fools-errand” path of subjective interference assessment. U/D showings represent a semblance of a “go/no-go” procedure for analyzing interference concerns. Anything more puts the Commission and its staff right back into a morass of questionable interference claims coupled with nuances of interference. But more to the point, to trigger the U/D analysis in the first instance, the FCC must define what the prevalence of interference must be, and what such interference is defined as. For instance, there is not an FM station in any but the most rural areas of the country that is not subject to interference somewhere on the periphery of its service area (this is why the proposed 54 dBμ limit on interference complaints is so important). But even

¹⁹ See footnote 16 above in which it is advocated that the FCC should require that a complainant state any and all connections she or he may have with the existing station so that an assessment can be made of such connections. the changes Aztec proposes to the Section 74.1201(k) (Definitions) in the attached Appendix.

²⁰ NPRM at paragraph 22.

so, the FCC's propagation curves anticipate that within a specified contour, that station will provide 50% the expected signal level 50% of the time. Thus, there is no doubt that there will be discrete areas of interference from co-channel and adjacent-channel stations even within a station's protected contour. The FCC should require for any interference complaint that the interference be "ongoing (rather than transitory) objectionable interference" meaning that the interference exists: (1) at more than one discrete point; (2) for more than a transitory listening time; and (3) the listener regularly (at least twice per week) listens to the subject radio station at the subject locations.²¹

25. Thus, if the FCC is willing to continue to undertake the "fools-errand" of trying to separate legitimate *bona fide* interference complaints from the bogus and shills, the FCC should at least strive to make its procedures as predictable and equitable as possible for the local radio listeners and broadcasters involved. The public interest should not be harmed by the private interests of a radio station owner or manager who wishes his or her FM signal to travel as far as possible beyond its community, its service area and its protected contour, with that quest being facilitated by the FCC giving him or her a regulatory cudgel to quash local service to an FM translator's local listeners through the FCC's complaint processes.

V. LIMITS ON ACTUAL INTERFERENCE COMPLAINTS

26. The FCC seeks comment on identifying a signal strength beyond which an FM station may not claim interference to its listeners from an FM

²¹ See NPRM at footnote 63 and the changes Aztec proposes to the Section 74.1201(k) (Definitions) in the attached Appendix.

translator, proposing an existing station's 54 dB μ contour as the limit. Mindful that some FM stations may have a minor portion of its local audience beyond its 60 dB μ service area contour, Aztec fully supports the specification of an existing station's 54 dB μ contour as a compromise to continue to protect an existing station's local listeners.

27. In its Petition, Aztec raised the issue that interference claims may be based on complaints from listeners far outside the distant station's own protected service contour and/or community of license to the "last gasp of ... radio signal coming through the FM hash."²² Aztec noted in its Petition that these distant interference claims threaten FM translators that are rebroadcasting AM stations and HD radio multicast channels to local listeners, and constitute a "perversion" of the Commission's intention when the FCC adopted these rules, i.e., to protect local full service stations from encroachment by out-of-market translators.²³

28. Aztec proposed in its Petition the predicted service area contour (60 dB μ contour for Class C, C1, C2 and C3 facilities, the 57 dB μ contour for Class B1 facilities, and the 54 dB μ contour for Class B facilities) of an existing station as the outer limit for interference complaints, believing the FCC-predicted service area contour that was the only clearly legally-supportable contour. The FCC in the NPRM proposes that the 54 dB μ contour, using the F(50,50) curves, be the limitation on FM translator interference complaints.

²² NPRM at paragraph 23.

²³ *Id.*

29. Aztec supports this 54 dB μ compromise as providing greater certainty in the realm of FM translators. Other than the 60 dB μ contour which is the FCC-mandated protected contour for most FM radio stations, the only other FM contour for which there is any like semblance of legal and technical support is the 54 dB μ contour, that being the protected contour for Class B facilities, as well as representing a nominal 6 dB buffer zone for the protection of radio reception to local listeners of existing stations.

30. There is, no doubt, an argument that can be made for some existing FM stations having some number of listeners beyond the predicted 54 dB μ contour. At the 54 dB μ contour, however, such listeners are distant from both the station's city of license, the station's service area, and the local core of the station's coverage. Such distant listeners in today's FM listening environment do not lack, however, other local radio services to tune to upon the inevitable fading of the subject distant station into FM hash, or being subject to interference from another station allocated under the FCC's existing allocation and assignment rules.

31. Therefore, the FCC's proposed 54 dB μ limit is both an equitable and a legally-supportable compromise in lieu of the 60 dB μ contour, particularly when it is noted that any co-channel or adjacent channel full-service facility using either Section 73.207 spacing, or Section 73.215(e) contour protection, can and will legally create interference to an existing station up to and in many cases inside the subject's station 60 dB μ contour. The proposed 54 dB μ signal strength limitation would not deprive any local radio listeners of local radio service. The alternative,

where any distant listener anywhere is able to remove an FM translator from the air, deprives thousands or potentially tens-of-thousands of local radio listeners of local radio service.

32. An anecdotal real-life example of FM radio station interference in the Washington, DC area is possibly the most helpful to both technophiles and non-technical individuals alike in understanding why the FCC's current FM translator complaint scheme of *any-distant-listener-anywhere puts an FM translator to death* is simply not in the interest of either radio listeners or the public interest. Some 75 miles to the west of Washington, DC is the northernmost point of Skyline Drive, a 105-mile scenic road that runs from that point south along the top ridge of the Blue Ridge Mountains of Virginia. On this top-of-the-mountain road, a radio listener driving and listening to his or her automobile radio can receive an FM station on just about every frequency on the FM dial due to his or her height above the surrounding terrain. Distant radio stations from the Washington area 80 miles to the east, the Roanoke area more than 100 miles to the southwest, the Richmond/Norfolk/Virginia Beach area more than 100 miles to the southeast, the Charlottesville area to the south and the West Virginia area to the west can all be heard on Skyline Drive, even though such FM stations may be many miles distant.

33. But, as the radio listener drives on Skyline Drive listening to any particular distant radio station, *the radio station changes and for a time period there is interference between two or more stations!* For five minutes or so of the

drive, a Washington, DC area station from the east can be clearly received on the eastern face of the mountain. As the road curves around a bend to another face of the mountain, the listener first gets destructive interference and then is listening to a West Virginia station from the west on the same frequency without touching the dial. As the listener drives a little more, a station from the Richmond/Norfolk/Virginia Beach area or Charlottesville area from the south on the same frequency may mix in, again creating destructive interference to the West Virginia station. Then, around another turn, more interference until the Washington, DC area station from the east is once again clearly and cleanly heard. This is a poignant reminder that the FCC should focus on the actual local listener, not the vagaries of distant signals.

34. One would think that no FCC policy would mandate that an FM translator be removed from the air if that translator happened to be one of the radio stations that created interference to a distant radio listener on Skyline Drive. But that is *exactly* what present-day FCC policies compel. Distressingly, a similar result obtains under the NPRM's proposed new six-listener policy if the FCC does not also adopt its proposed reasonable 54 dB μ signal limitation.

35. The nationwide FM radio listening terrain is replete with "Skyline Drive" situations in which an existing station's distant signal is blocked or unusually received. The same phenomenon can occur over extremely flat land, on rolling terrain, next to a massive building, at the top of a tall apartment house, in a rural or urban canyon, on or under a highway overpass, during signal propagation

ducting conditions, during times of no or extreme foliage, and so on and so forth. The subjective nature of the FCC's current FM translator interference rules simply does not take cognizance of distant FM signal variability in imposing the death penalty upon an FM translator for any alleged interference whatsoever.

36. The better FCC approach, of course, would be to stop the fools-game of trying to assess the legitimacy and *bona fides* of FM translator interference complaints, and move instead to a strict allocation or contour-based system for FM translators as is now used for most other broadcast services. Or, imagine the opposite for full-service stations -- if the FCC accorded interference protection in the congested northeast to short-spaced FM stations, giving an earlier-initiated service the right to remove a later-inaugurated service from the air for any interference whatsoever. There would be regulatory chaos, many fewer FM stations, and far fewer FM services for local radio listeners. Every day in the northeast, there are myriad areas of interference between short-spaced FM stations that forestall a distant listener from continuing to listen to his or her favorite distant radio station. Yet, remarkably, the FM service in the northeast remains healthy with large local audiences and predictable and consistent radio listening areas.

37. Except for FM translators, the local radio listener and the public interest remain well served by the Section 307(b) local service considerations embodied in the Communications Act of 1934, as amended. For FM translators, the FCC has allowed distant listeners to remove local radio service from local

listeners. Distant listening to distant stations can be charitably described as “DXing” -- the hobby of receiving and identifying distant radio or television signals.²⁴ DXing, while a fine hobby, can be a perversion of the “fair, efficient, and equitable distribution” provisions of Section 307(b) of the Communications Act if the FCC acts to protect distant listeners in lieu of a local radio audience.

38. FM stations are authorized by the FCC under Section 307(b) to serve a community of license and a discrete service area encompassed by the FM station’s licensed predicted contour. Removing local FM translator service from local listeners based upon alleged interference to a distant FM station listeners outside the compromise 54 dB μ contour proposed by the FCC in the NPRM would unfairly, inefficiently and inequitably, contrary to Section 307(b), favor the extension of a distant station’s weak signal to vast areas, disfavoring tens of thousands of local listeners. This would be the antithesis of Section 307(b) localism. Therefore, the FCC should adopt its compromise 54 dB μ contour limitation on FM translator complaints.

VI. CONCLUSION

39. The FCC in acting on this NPRM should determine that equities now favor local service provided to local listeners from FM translators carrying AM and HD sub-channel primary stations, in lieu of continuing to extend an existing station’s signal far past its predicted contour, its community of license, its market, and its service area. The FCC in the NPRM properly recognizes that there

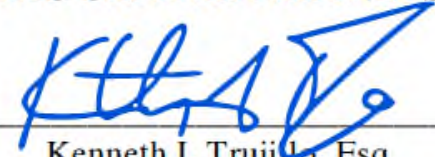
²⁴ See generally <https://en.wikipedia.org/wiki/DXing>.

has been a fundamental shift in the nature of FM translators to which FCC policy and rules have not adjusted.

40. Local service provided by FM translators is now vital to many local communities and local radio listeners. Local radio service to local listeners provided by an FM translator should not be removed from the air unless there is a significant public interest reason to do so, and the public would be significantly served by such a loss of service. The FCC adopting its proposals set forth in its NPRM consistent with Aztec's comments above and the rule changes in the attached Appendix would serve localism, local radio listeners and the public interest.

Respectfully submitted,

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APPENDIX

Aztec Proposed Edits to NPRM Rule Changes (Proposed changes shown by underline and strike-out)

Part 74 of Chapter 5 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 74 continues to read as follows:
Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336, and 554.

2. Add new paragraph (k) of Section 74.1201 to read as follows:

§ 74.1201 Definitions.

* * * * *

(k) Listener complaint. A complaint that is signed by the listener and contains the following information: (1) full name and contact information; (2) a clear, concise, and accurate description of the location where the interference is alleged or predicted to occur; (3) a statement that ~~the complainant listens to the desired station at least twice a month for existing~~ stations there is objectionable ongoing (rather than transitory) interference meaning that the interference exists at more than one discrete point, and for more than a brief listening time, and for both existing and proposed stations, the complainant regularly (at least twice per week) listens to the subject radio station at the locations that are or may be subject to such interference; and (4) a statement that the complainant has no legal, financial, friendship, social, social media, or familial connection or affiliation with the desired station, its owners, its personnel, its advertisers or vendors, or any family members of such individuals or entities, or if he or she does, a description of the nature of such connection or affiliation. The complainant must state under penalty of perjury that the information in the complaint is true and correct pursuant to § 1.16 verification procedures, acknowledge that criminal prosecution may result from the submission of false information, that the FCC, translator or booster station may request further information from the complainant and that a failure to submit requested additional information will result in a dismissal of the complaint.

3. Revise paragraph (a)(1) of Section 74.1233 to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

(a) Applications for FM translator and booster stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. For FM translator stations, a major change is (i) any change in frequency (output channel) except (A) changes to first, second or third adjacent channels, or intermediate frequency channels; or (B) upon a showing of interference to or from any other broadcast station, remedial changes to any frequency; or (ii) any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area. In addition, any change in frequency relocating a station from the non-reserved band to the reserved band, or from the reserved band to the non-reserved band, will be considered major. All other changes will be considered minor. All major changes are subject to the provisions of §§ 73.3580 and 1.1104 of this chapter pertaining to major changes.

4. Revise paragraph (a)(3) of Section 74.1203 to read as follows:

§ 74.1203 Interference.

(a) An authorized FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to:

* * * * *

(3) The direct reception by the public of the off-the-air signals of any full service station or previously authorized secondary station. Interference will be considered to occur whenever there is objectionable ongoing (rather than transitory) interference to a listener's reception of a regularly used signal, as demonstrated by six or more listener complaints as defined in § 74.1201(k) of the part and a map plotting specific listener addresses in relation to the relevant station contours, is impaired by the signals radiated by the FM translator or booster station, regardless of the quality of such reception or the channel on which the protected signal is transmitted; except that no listener complaint will be considered actionable if the alleged interference occurs outside the desired station's 54 dBμ contour or if submitted more than one year subsequent to the initiation of program test authority for: (i) the FM translator or booster station facility; (ii) a new full-service station; or (iii) a change in class or transmitter site for an existing station.

5. Revise paragraph (f) of Section 74.1204 to read as follows:

§ 74.1204 Protection of FM broadcast, FM Translator and LP100 stations.

* * * * *

(f) An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if grant of the authorization will result in interference to the reception of a regularly used, off-the-air signal to which the complainant regularly (at least twice per week) listens at locations that may be subject to such interference of any authorized co-channel, first, second or third adjacent channel broadcast station, including previously authorized secondary service stations, within the 54 dBμ field strength contour of the desired station, as demonstrated by six or more listener complaints, as defined in § 74.1201(k) of the part, as well as a map plotting specific listener addresses in relation to the relevant station contours.